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March 2, 2017

The Honorable Timothy Larson
The Honorable Kevin Kelly
The Honorable Sean Scanlon
The Honorable Robert C. Sampson
Insurance and Real Estate Committee
Legislative Office Building, Room 2800
Hartford, CT 06106

Re: Technical Correction for H.B. 7126, AN ACT CONCERNING TRANSPORTATION
NETWORK COMPANIES.

Dear Chairman Larson:

I write on behalf of the Consumer Data Industry Association (CDIA) to urge your committee to make a technical correction to H.B. 7126 by deleting the term accredited. In section 3(a)(2) of this legislation, a transportation network company (TNC) is required to "conduct, or have an **accredited** third party conduct, a state and national criminal history records check." We believe that all consumer reporting agencies should have the ability to compete to perform criminal background checks as required by this proposed legislation. We respectfully request that the statute allow for fair, free market competition to produce the best quality and most comprehensive criminal background checks available to TNCs. Criminal background checks should not be limited to those conducted by accredited members of any one specific trade association. I make this request on behalf of CDIA, a trade association representing some of the largest criminal background check companies in the United States.

CDIA is an international trade association, founded in 1906, of more than 130 corporate members. Our mission is to enable consumers, media, legislators and

regulators to understand the benefits of the responsible use of consumer data which creates opportunities for consumers and the economy. CDIA members provide businesses with the data and analytical tools necessary to manage risk. This includes criminal background checks. Our members help ensure fair and safe transactions for consumers, facilitate competition and expand consumers' access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

- 1. All consumer reporting agencies should have the ability to compete to perform criminal background checks as required by law and do not need to be accredited by a trade association.**

A. The Fair Credit Reporting Act

A criminal background check done by a third-party for an employer is a consumer report under federal law¹ and that third-party is a consumer reporting agency under federal law.² Consumer reports and consumer reporting agencies are regulated by the Federal Fair Credit Reporting Act ("FCRA").³ Then-FTC chairman, Tim Muris, speaking at a conference, said "[t]he FCRA is an intricate statute that strikes a fine-tuned balance between privacy and the use of consumer information. At its core, it ensures the integrity and accuracy of consumer records and limits the disclosure of such information to entities that have 'permissible purposes' to use the information."⁴

Since 1971, the FCRA has served employers and applicants alike by acknowledging vibrant and lawful use of criminal history information, requiring reasonable procedures to ensure maximum possible accuracy, and requiring substantial systems to correct any inaccuracies that occur.

i. General protections

The FCRA governs consumer reports, regulates consumer reporting agencies, and protects consumers. The law requires consumer reporting agencies to maintain reasonable procedures to assure maximum possible accuracy.⁵ The law also provides many other consumer protections as well. For example:

¹ 15 U.S.C. § 1681a(d).

² *Id.*, § 1681a(f).

³ *Id.*, § 1681 *et seq.*

⁴ FTC Chairman Tim Muris, October 4, 2001 before the Privacy 2001 conference in Cleveland.

⁵ *Id.*, § 1681e(b).

- Those that furnish data to consumer reporting agencies cannot furnish data that they know or have reasonable cause to believe is inaccurate, and they have a duty to correct and update information.⁶
- Consumers have a right to dispute information on their consumer reports with consumer reporting agencies and the law requires dispute resolution within 30 days (45 days in certain circumstances). If a dispute cannot be verified, the information subject to the dispute must be removed.⁷
- A consumer reporting agency that violates federal law is subject to private lawsuits and enforcement by the Federal Trade Commission (“FTC”), Consumer Financial Protection Bureau (“CFPB”), and state attorneys general.⁸

ii. Protections specific to employment screening

In addition to the general protections above, there are protections specific to the use of consumer reports for employment purposes.

For example, under § 1681k of the FCRA, a consumer reporting agency which “furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer’s ability to obtain employment,” such as criminal record information, must either

- Notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the employer to whom such information is being reported; or
- “[m]aintain strict procedures designed to insure” that the information being reported is complete and up to date, and such information “shall be considered up to date if the current public record status of the item at the time of the report is reported.”

As a result of these requirements, consumer reporting agencies that include adverse criminal record information in an employment report either notify the consumer of that fact or access directly the most up-to-date information.

Although the FCRA allows employers to review the criminal histories of prospective and existing employees,⁹ this review comes with certain obligations. Under § 1681b(b) of the FCRA:

⁶ *Id.*, § 1681s-2(a)(1)-(2).

⁷ *Id.*, § 1681i(a)(1), (5).

⁸ *Id.*, § 1681n, 1681o, 1681s.

⁹ *Id.*, § 1681b(a)(3)(B).

- Before ordering a consumer report for employment purposes, an employer must certify to the consumer reporting agency that the employer has and will comply with the employment screening provisions of the FCRA, and that the information from the consumer report will not be used in violation of any applicable federal or state EEO laws or regulations.
- Before requesting a consumer report, an employer must give the prospective employee a written disclosure that a consumer report may be obtained for employment purposes and get the consumer's authorization to obtain a consumer report for employment purposes. The disclosure document provided to the consumer must be clear and conspicuous and contain only the disclosure.
- Before taking an adverse action based on a consumer report, the employer must provide to the consumer a copy of the report and the summary of rights mandated by the CFPB. This notice gives the employee an opportunity to dispute the report.
- The employer must provide a second adverse action notice if an adverse action is actually taken.

B. For decades, consumer reporting agencies have assisted in performing criminal background checks, without bias to any one association

FBI Director Louis Freeh testified before Congress and noted that in 1998, his agency made more than 53,000 inquiries to commercial on-line databases "to obtain public source information regarding individuals, businesses, and organizations that are subjects of investigations." This information, according to Director Freeh, "assisted in the arrests of 393 fugitives, the identification of more than \$37 million in seizable assets, the locating of 1,966 individuals wanted by law enforcement, and the locating of 3,209 witnesses wanted for questioning."¹⁰

In 2006, U.S. Attorney General's Report on Criminal History Background Checks said that:

[c]ommercial databases...offer other information that may not be available through state and FBI repository checks. A search of commercially available databases may reveal charges and dispositions not reported to the state or national repositories [and] records relating to some offenses are not reported to the FBI...Even state repositories may not have records on less serious offenses

¹⁰ Hearing before the Senate Comm. on Appropriations Subcomm. for the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies, March 24, 1999 (Statement of Louis J. Freeh, Director of the Federal Bureau of Investigation).

that have not been forwarded by local law enforcement agencies. Some of this information may be available through certain commercial databases.¹¹

Since consumer reporting agencies are required by Federal law to adhere to strict requirements of accuracy, access, and correction, all consumer reporting agencies, not just those accredited by a trade association, should have the ability to compete to perform criminal background checks as required by this pending legislation.

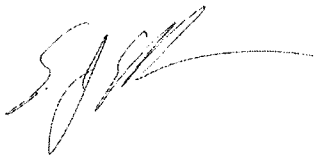
CDIA and its members are recognized leaders in the use of consumer data, including criminal background checks. Our members provide businesses with the data and analytical tools necessary to manage risk including criminal background checks. Our members help to ensure fair and safe transactions for consumers, facilitate competition and expand consumers' access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

2. Conclusion

All consumer reporting agencies should have the ability to compete to perform criminal background checks as required by legislation regulating transportation network companies. We respectfully request that the Committee considers amending the language of this legislation to allow fair, free market competition to produce the best quality and most comprehensive criminal background checks available to TNCs. Criminal background checks should not be limited to those conducted by accredited members of any one specific trade association.

I would be happy to answer any questions the Committee might have.

Sincerely,



Eric J. Ellman

Interim President and CEO/Senior Vice President, Public Policy & Legal Affairs

¹¹ *The Attorney General's Report on Criminal History Background Checks*, U.S. Department of Justice, Office of the Attorney General, June 2006, http://www.justice.gov/olp/ag_bgchecks_report.pdf, 54.